

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

GORDON J. MACDONALD
ATTORNEY GENERAL



ANN M. RICE
DEPUTY ATTORNEY GENERAL

April 30, 2018

VIA U.S. MAIL

Anna G. Zimmerman, Esq.
Law Office of Manning & Zimmerman, PLLC
87 Middle Street
Manchester, NH 03101

**Re: *Dong Yeol Kim & Junghee Kim v. Dep't of Res. and Econ. Dev.*,
Docket No. 217-2017-CV-00028, Merrimack County Superior Court**

Dear Anna:

Please find enclosed a countersigned, fully-executed copy of the Settlement Agreement and Release in the above-referenced matter.

Should you have any questions, please contact me at (603) 271-3658.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Seth M. Zoracki", with a long horizontal flourish extending to the right.

Seth M. Zoracki
Assistant Attorney General

Enclosure

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is entered into as of April 12, 2018, by and between Dong Yeol Kim and Junghee Kim (collectively, “Plaintiffs” or the “Kims”), on the one hand, and the State of New Hampshire, Department of Natural and Cultural Resources, formerly known as the Department of Resources and Economic Development,¹ and any present or former officer, employee, or agent of the State of New Hampshire, individually and collectively, in both their individual and official capacities (collectively, the “State”), on the other hand (each of Plaintiffs or the State may be referred to herein as a “Party,” and collectively as the “Parties”).

WHEREAS, Plaintiffs filed a complaint against the State in the action pending in the Superior Court of the State of New Hampshire, Merrimack County, styled as *Dong Yeol Kim and Junghee Kim v. State of New Hampshire, Department of Resources and Economic Development*, Docket No. 217-2017-CV-00028 (N.H. Super. Ct., filed Jan. 17, 2017) (the “Action”), asserting claims for negligence and loss of consortium;

WHEREAS, on or about March 6, 2017, the State filed an answer to the complaint in the Action and asserted affirmative defenses;

WHEREAS, the State has denied and disputed, and continues to deny and dispute, any allegations of wrongdoing, damages, or liability in the Action;

WHEREAS, the Parties participated in a mediation session and, with the assistance of the mediator, reached the settlement that is the subject of this Agreement;

¹ As of July 1, 2017, the Department of Resources and Economic Development (“DRED”) underwent a reorganization. See Laws 2017, ch. 156. As a result of the reorganization, DRED was eliminated. The functions of the Division of Parks and Recreation, which was the relevant division within DRED for purposes of the Action, now reside within the Department of Natural and Cultural Resources.

WHEREAS, without conceding the merit or lack of merit of any claim or defense or the existence of any liability whatsoever, the Parties wish to settle, compromise, and finally and forever resolve all matters, controversies, disputes, and claims that may exist between Plaintiffs and the State relating to the subject matter of the Action, or the allegations therein, including the released claims described herein, or any claims that could have been brought based on the subject matter of the Action.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, and for other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **SETTLEMENT AMOUNT.** In consideration of the release and dismissal of the Kims' claims against the State as set forth herein, the State shall make or cause to be made a one-time, lump-sum payment of Two-Hundred-Ten Thousand Dollars (\$210,000) (the "Settlement Amount"), payable jointly to the Law Office of Manning & Zimmerman, PLLC, and Dong Yeol Kim and Junghee Kim.

2. **DISMISSAL OF THE ACTION.** Within three (3) business days after the receipt of the payment by the State of the Settlement Amount, counsel for Plaintiffs will file in the Superior Court of the State of New Hampshire, Merrimack County, neither party docket markings dismissing the Action with prejudice and without an award of fees, costs, or expenses to any Party.

3. **GENERAL RELEASE OF ALL CLAIMS.**

(a) Each Plaintiff on his or her own behalf, and on behalf of his or her heirs, executors, administrators, successors, and assigns (the "Kim Releasors"), hereby knowingly, voluntarily, fully, finally, and forever releases, relinquishes, settles, and discharges the State,

including any and all present or former employees, agents, representatives, servants, volunteers, independent contractors, officers, officials, directors, attorneys, insurers, indemnities, successors, and assigns of the State, in their individual, business, and official capacities (the “State Released Parties”) of and from any and all claims, allegations, rights, covenants, causes of action, duties, obligations, demands, actions, debts, sums of money, suits, charges, contracts, agreements, promises, judgments, verdicts, costs, damages (including, but not limited to, compensatory, enhanced compensatory, and punitive damages), and liabilities of every nature, description, and kind, whether known or Unknown (as defined below), whether arising under federal, state, local, statutory, common law, or any other domestic or foreign law, rule, or regulation, that concern, arise out of, refer, or relate in any way to, or are based upon any of the allegations, events, incidents, facts, matters, or subject matters, occurrences, representations, statements, or omissions alleged, involved, set forth, or referred to in any complaint filed in the Action (the “Kim Released Claims”), except that the Kim Released Claims shall not include a claim to enforce this Agreement. Each Plaintiff represents and warrants to the State that he or she has the right and authority to release, relinquish, settle, and discharge the Kim Released Claims on behalf of the Kim Releasers.

(b) Each Plaintiff understands and affirms that the release contemplated by this Agreement extends to claims that Plaintiffs do not know or suspect to exist at the time of this release, which, if known, might have affected the decision to enter into the release (“Unknown” claims).

4. RESPONSIBILITY AND INDEMNIFICATION WITH RESPECT TO LIENS AND OTHER CLAIMS. Each Plaintiff acknowledges and agrees that he or she is responsible for any and all bills, liens, statements, rights of subrogation, or reimbursement for

services rendered or payments made by any third party to either Plaintiff, including but not limited to legal, insurance providers, hospitals, medical and health care providers, Medicaid, Medicare, unemployment compensation, workers' compensation, or any other services or payments, which exist, may exist, or in the future may exist, as a result of the Kim Released Claims. In the event that any such third party asserts any claim against any State Released Party for outstanding bills, liens, statements, rights of subrogation, or reimbursement for services rendered or payments made to either Plaintiff by such third party, as a result of the Kim Released Claims, then Plaintiffs agree to indemnify, defend, and hold harmless any State Released Party for any such claims.

5. **RESPONSIBILITY AND INDEMNIFICATION WITH RESPECT TO TAX TREATMENT.** Each Plaintiff acknowledges and agrees that should the consideration set forth above, or any part thereof, be subject to any taxes, penalties, or interest, Plaintiffs shall be solely responsible for the payment of all such taxes, penalties, or interest. Each Plaintiff further agrees to fully indemnify and defend the State Released Parties from any claims of any nature seeking recovery of any such taxes, penalties, or interest. Each Plaintiff further agrees that he or she will not assert, file, or make any claims against the State Released Parties for any such taxes, penalties, or interest, or for any costs, fees, or expenses that he or she may incur in connection with any disputes with the Internal Revenue Service and/or any other tax authority.

6. **NO ADMISSION OF WRONGDOING.** Nothing in this Agreement or the furnishing of the consideration for this Agreement shall be construed as an admission by the State of any liability or unlawful conduct whatsoever. Each Plaintiff acknowledges that the State has consistently denied, and continues to deny, any allegations of wrongdoing. This Agreement

is not intended to be used and shall not be used as evidence or for any other purpose in any other action or proceeding other than to enforce the terms of this Agreement.

7. **DISCLOSURE.** Each Plaintiff acknowledges that this Agreement is subject to N.H. Rev. Stat. Ann. § 507:17 and N.H. Rev. Stat. Ann. § 91-A:4(VI), and may be made available as a matter of public record in accordance therewith.

8. **ATTORNEYS' FEES AND EXPENSES.** The Parties agree that the Settlement Amount constitutes the entire payment to be made in settlement of Plaintiffs' claims against the State in the Action. No Party shall seek to recover any additional amounts from any other Party, including for their attorneys' fees, costs, and expenses in connection with all matters related to the Action and its settlement.

9. **CONSTRUCTION.** In executing this Agreement, each Plaintiff acknowledges that this Agreement is the result of negotiations in good faith and at arm's length between Plaintiffs and the State. Each Plaintiff further acknowledges that he or she has consulted with counsel, and that he or she has executed this Agreement knowingly, voluntarily, and without undue influence or duress. Accordingly, the terms, provisions, and conditions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, without application of any rule of interpretation or construction providing that ambiguous or conflicting terms, conditions, or provisions shall be interpreted against the Party whose legal counsel prepared the executed version or any prior drafts of the agreement.

10. **ENTIRE AGREEMENT.** The Parties acknowledge and agree that this Agreement constitutes the full and complete agreement between and among the Parties with respect to the matters encompassed herein and supersedes all previous agreements, promises,

proposals, representations, understandings, and negotiations, whether written or oral, between and among the Parties respecting the matters encompassed herein.

11. **AUTHORITY.** Each Plaintiff represents and warrants that (a) he or she has the sole right and exclusive authority to execute this Agreement, and (b) he or she has not sold, assigned, transferred, or otherwise conveyed any of the claims, demands, actions, suits, debts, causes of action, or liabilities referred to in this Agreement. Each Plaintiff acknowledges that he or she has carefully read this Agreement, knows and understands its contents, and has consulted with counsel of his or her choice concerning the legal consequences of this Agreement. Each Plaintiff signs this Agreement voluntarily and freely, without duress and as his or her own free act. No promise or inducement that is not expressed in this Agreement has been made to Plaintiffs. Plaintiffs have not relied upon the advice or representations of the State or any representative thereof in executing this Agreement.

12. **BINDING AGREEMENT.** This Agreement is binding upon and inures to the benefit of the Parties, their successors, and assigns. Each person signing this Agreement or any portion thereof on behalf of any Party hereby warrants and represents that such person expressly has been authorized to execute this Agreement on behalf of such Party as a document legally binding on such Party, and that such person has full authority to take all such reasonable, necessary, and appropriate actions that may be required or permitted to be taken pursuant to the Agreement to effectuate its terms.

13. **MODIFICATION.** This Agreement shall not be altered, amended, modified, or rescinded except by an instrument in writing signed by each of the Parties, and specifically referencing this Agreement.

14. **SIGNATURES IN COUNTERPART.** This Agreement may be executed simultaneously in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. Signatures by facsimile or other electronic imaging shall be deemed to constitute original signatures.

15. **GOVERNING LAW/JURISDICTION.** This Agreement, and any disputes related thereto, shall be governed by the law of the State of New Hampshire, and the Parties expressly submit any claim arising therefrom to the exclusive jurisdiction of the Superior Court of the State of New Hampshire.

16. **HEADINGS.** The headings herein are included for the purpose of convenience only and are not meant to have legal effect. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context indicates is appropriate.


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ACCEPTED AND AGREED:




Dong Yeol Kim, Plaintiff

Date: 04 / 23 / 18



Junghee Kim, Plaintiff

Date: 04/23/18



Anna Goulet Zimmerman
Counsel for Plaintiffs, Dong Yeol Kim and Junghee Kim

Date: 4/25/18

State of New Hampshire, Department of Natural and Cultural Resources
The Office of the Attorney General, pursuant to N.H. Rev. Stat. Ann. § 99-D:2

By: _____
Seth M. Zoracki, Assistant Attorney General

Date: _____

ACCEPTED AND AGREED:

Dong Yeol Kim, Plaintiff

Date: _____

Junghee Kim, Plaintiff

Date: _____

Anna Goulet Zimmerman
Counsel for Plaintiffs, Dong Yeol Kim and Junghee Kim

Date: _____

State of New Hampshire, Department of Natural and Cultural Resources
The Office of the Attorney General, pursuant to N.H. Rev. Stat. Ann. § 99-D:2

By: 

Seth M. Zoracki, Assistant Attorney General

Date: 04/30/2018